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**EXPLORING THE INTERPLAY BETWEEN
DEPLETING ENVIRONMENTAL CONDITIONS UPON
HEALTH: A SPECIAL EMPHASIS ON INDIAN
CONSTITUTION**

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Abstract

Environment has become one of the most debatable topics recently. Our Indian Constitution too provides for certain mandates that pertains to environment has also become one of the most concerned subjects because of the increasing pollution levels. The rising pollution is affecting all the life forms on the planet. Article 21 of the Indian Constitution is the most significant Article as it forms a bridge between the Environmental law and the fundamental law of the land i.e. the Indian Constitution. The Article, through various decisions of the Hon'ble Supreme Court has been interpreted as a fundamental right of the citizens to live in a healthy environment. Also an analysis of how environmental degradation in various forms are causing numerous diseases has been mentioned.

KEYWORDS: Environment, Constitution, Health, Diseases, Judgments.

PRELIMINARY DETAILS

A. AIMS & OBJECTIVES OF STUDY:

The main aim of the study is to analyse the constitutional mandates in protection of the health, of the environment and its dependants. The detailed aims are:

- To learn about the constitutional provisions dealing with environment and observe their effectiveness in the protection of the health of the biosphere.
- To study the problems on human and animal health that arise due to the deteriorating condition of environment.
- To study and analyse the concept of Right to Wholesome Environment in detail and to see how efficiently it is being implemented.

B. RESEARCH PROBLEM

The health of environment is deteriorating day by day which is directly affecting human and animal health, causing numerous diseases. Article 21 has been interpreted by Judiciary as a protection towards a healthy environment. Therefore, through this paper the depleting condition of environment and its effect on the health of those dependent upon it have been dealt in detail.

C. RESEARCH QUESTIONS

- a. What are Constitutional provisions with regards to the protection of environment?
- b. How effective are Constitutional mandates in the protection of environment?
- c. What all problems are associated with health due to depletion of environment?
- d. What is Right to Wholesome Environment and how effectively it's being applied in the protection of health of the biosphere?

D. HYPOTHESIS

The depleting condition of environment is a burning issue worldwide and numerous steps are being taken towards its protection. In our country also the legislature has played an efficient role in safeguarding the environment by making various effective laws and even judiciary through methods like judicial intervention and judicial activism had and is playing a pro-active role.

E. RESEARCH METHODOLOGY

The research methodology followed in the study is doctrinal *i.e.* descriptive and analytical, with many of the researchers' views interspersed throughout the project. Primary sources such as statutes, case laws and international norms have been used. Secondary sources such as books, articles, news reports and websites have been relied upon.

F. DISTRIBUTION OF CHAPTERS

Chapter 1 (INTRODUCTION) has been written so as to introduce the term environment and the constitutional mandates in protection of biosphere.

Chapter 2 (EFFECTIVENESS OF CONSTITUTIONAL MANDATES) deals in detail about the efficiency of constitutional provisions in protecting health of environment.

Chapter 3 (ENVIRONMENTAL EFFECT ON HEALTH) deals with the health issues on all life forms and even environment due to depleting environmental conditions.

Chapter 4 (RIGHT TO WHOLESOME ENVIRONMENT) deals with Article 21 in detail and how effectively it's being applied in various circumstances.

Chapter 5 (RECOMMENDATIONS) deals with certain suggestions that if followed would help in improvising the health of environment along with the health of other life forms.

Chapter 6 (CONCLUSION) consists of conclusions that can be drawn from the research.

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1. INTRODUCTION

The term “**Environment**” includes air, water and land and the interrelationships which exist among and between these basic elements and human beings and other living organisms. Environment is a polycentric and multifaceted problem affecting the human existence.¹

However, in the present scenario the environment is being played with certain harmful solid, liquid or gaseous substance is so discharged in the environment that it causes nothing less than what is termed as “**ENVIRONMENTAL POLLUTION**”. It has become a matter of utmost emergency that the environment must be protected because if no step is taken towards environmental protection none life would be able to exist be it plants, animals or humans.

The pollution so caused affects the health of all the life forms that exist on the planet. The vehicular emissions, smoke from industries, use of poly bags, water contamination, etc. all are harmful to the health of mother earth and the health of life forms that exist on the planet.

Our Indian Constitution is also imbued with certain mandates that clearly provides for protection of environment from all the harmful ingredients and also made it a duty upon the State to make the mother earth a better and a healthy place to live in.

Certain provisions of the Indian Constitution are:

- Article 14: The Article guarantees “Right to Equality” to all persons and thus imposes a duty upon the State to treat all matters pertaining to environment with equality.² The principle is even recognised internationally.³
- Article 19 (1) (g): The Article guarantees “Right to Freedom of Trade and Commerce” and through various judgments it has been held that the right is not an absolute one and is subject to certain reasonable restrictions. Therefore, any trading practice that hampers the flora and life forms on earth is regarded to infringe the fundamental right.⁴

¹ T.N. Godavarman Rao v. UOI, A.I.R 2003 SC 724 (India).

² Kisan Bhagwan Gawali v. State of Maharashtra, A.I.R 1990 Bom 343 (India).

It was held that the exclusion of a particular class of grazers from consideration and inclusion of some on the ground that the excluded class was indulging in illegal grazing is violative of Article 14 and invalid.

³ Principle 1, Stockholm Declaration, 1972: “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being...”

⁴ Abhilash Textile v. Rajkot Municipal Corporation, A.I.R 1988 Guj,

- Article 21: The Article guarantees “Right to life” which automatically implies that all citizens shall have a Right to Wholesome Environment. Various Judicial pronouncements have established the relationship between the Right to life and the Right to live in a clean, healthy and unpolluted environment⁵.
- Article 48 A: The Article was inserted by the 42nd Amendment 1976, in Part IV of the Indian Constitution. Through this Article a Constitutional imperative has been imposed upon the State and its instrumentalities to take appropriate measures in the protection, promotion and improvement of the environment.⁶
- Article 51 A (g): The Article confers upon the citizens of India a fundamental duty to protect and improve the natural environment which includes forests, lakes, rivers and wildlife. However, the scope of the fundamental duty is limited.⁷

2. EFFECTIVENESS OF CONSTITUTIONAL MANDATES

Constitution being the fundamental law of the land needs to be dynamic as the society is of such a nature. Environmental issues had become a concern since earlier times and after the Stockholm Declaration in 1972 a grave need was felt to upgrade the Indian Constitution to the changing environmental demands and thus, through the 42nd Amendment in 1972 two Articles namely Article 48 A and 51 A (g) were inserted.

India is also the first country which added environmental mandates in its Constitution. So as to enforce the Constitutional provisions effectively many legislations have been passed by the legislature like the Water (Prevention and Control of Pollution) Act, 1974, The Air (Prevention and Control of Pollution) Act, 1981 and The Environment (Protection) Act, 1981. Legislature through these laws and even working upon the international obligations have proved itself to be working in an efficient manner.

No one has a right to carry on business so as to cause nuisance to society. One cannot carry on the business in a manner by which the business activity becomes a health hazard to the entire society.

⁵ Amarnath Shrine, re, (2013) 3 S.C.C 247 (India).

The expression ‘life’ assured in Article 21 of the Constitution does not connote mere animal existence of continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standards of life, hygienic conditions in workplace and leisure.

⁶ T.N. Godavarman Thirumalpad v. Union of India, A.I.R 2003 SC 724 (India).

⁷ Sushanta Tagore v. Union of India, A.I.R 2005 SC 1975.

Preservation of environment and keeping the ecological balance unaffected is a task which not only governments but also every citizen must undertake. It is a social obligation and let us remind every citizen that it is his fundamental duty as enshrined in Article 51 A (g) of the Constitution.

The Judiciary is even playing a significant role in improvising the environment by judicial pronouncements when any case is filed under Article 32 and 226 of the Indian Constitution⁸. Through Judicial activism the courts have developed various concepts like the Doctrine of Sustainable Development, Public Trust Doctrine, Principle of Inter-generational equity, Polluter Pay Principle⁹ and many others.

In the present era the rising pollution is a contribution of several factors, which affects both the flora and fauna and even health of all. Therefore, taking into consideration all the provisions of the Indian Constitution with regards to environment are very apt as they recognize the right to health and Right to Wholesome environment a fundamental right and even casts a responsibility upon the State making it obligatory to work for improving the health of the citizens.

3. ENVIRONMENTAL EFFECT ON HEALTH

When pollutants are released in the environment tremendous damage is done not only to the ecology but to human and animal health. The pollutants so released results into global warming, contaminated seafood, increase in the cases of respiratory diseases, heart diseases, affects skin and eyes that are exposed directly to the atmosphere and many more.

AIR POLLUTION EFFECTS

- The toxic chemicals that are released into the atmosphere finally settles on to the plants and the surface of the water making them of poisonous nature, some plants even dries up due to harsh chemicals that settles upon them. The animals intakes such plants and water resulting in the absorption of the toxic chemicals. This is how the poison enters into the food chain ultimately trapping both plants and animals.
- The emission of Chlorofluorocarbons (CFC's), release of Carbon Dioxide and other harmful gases causes global warming which in turn raises the temperature of the earth making it warmer.
- The particles that are present in air and which are poisonous in nature goes inside the human body and usually causes drastic damage to heart. Thus, with the increasing rate of pollution the number of heart related diseases have just increased.

⁸ M.C. Mehta v. Union of India, (1988) 1 S.C.C 471 (India).

A PIL can be brought by any public-spirited person, who may not be an aggrieved person, for a common cause or against any activity or conduct which adversely affects the public at large or group of persons.

⁹ Vellore Citizen Welfare Forum v. Union of India, (1966) 5 S.C.C 647.

- Air pollutants are mostly carcinogens and the industrial areas are more prone to such air that consist of such particles. Such pollutants increases the risk of cancer which is more or less an incurable disease.
- Even large exposure to air causes respiratory diseases like asthma, pulmonary cancer, Mesothelioma, Leukaemia, neurological problems, birth and immune system defects, decreases in lung function and many more such health-related issues. In short, air pollution had led many people to the death bed.¹⁰

WATER POLLUTION EFFECTS

- Marine life is the most affected by such pollution as it kills various species and due to this reason various species are endangered. Humans are also affected because they consume the marine species along with the poison.
- Human contact with beaches causes rashes, hepatitis, diarrhoea, encephalitis, stomach aches, vomiting's and many other such skin and digestive diseases.
- Contaminated water that is rich in chemicals like lead, pesticides, hydrocarbons, etc. causes reproductive problems in females and also causes damage to the nervous system, liver and kidney.
- Polluted water that consists of industrial pollutants may also cause cancer and may even result in the death of an individual.
- Certain diseases that are commonly associated with drinking polluted water are amoebiasis, typhoid, hookworm, etc...

LAND POLLUTION EFFECTS

- The toxic material that pollutes the soil enters into the human and animal body directly by eating fruits and vegetables that are grown on the polluted land as they absorb the toxic particles along with the nutrients of the soil. Such fruits and vegetables are then consumed by humans ultimately affecting their health.
- The landfills that bear the waste from the rural or urban areas produce a foul smell and act as a breeding ground for various infecting bees and flies and even rodents like rats, mice and insects which in turn causes diseases. Many of the landfills are even burnt causing further air pollution.

¹⁰ Susan S. Lang, *Water, Air and Soil Pollution Causes 40 percent of Deaths Worldwide*, (2007).

According to Cornell University study, air pollution from smoke and various chemicals kills 3 million people a year.

- Various toxic chemicals that are found in pharmaceuticals, fertilizer and pesticide industries also have harmful effects on human health.¹¹
- Deforestation is one of the major causes of land pollution as it destroys habitats of various species and even hampers the ecosystem. The soil becomes fully exposed to soil erosion, acidification and leaching.
- Diseases that are associated with land pollution are both long term and short term. Certain longterm diseases are cancer, nervous system damage, neuromuscular damage and even damage to liver and kidney whereas the shortterm diseases are headache, nausea, chest pain, skin rashes and irritations.

4. RIGHT TO WHOLESOME ENVIRONMENT

The right to life given under Article 21 of the Constitution of India includes the right to live in a healthy environment. The state cannot deprive a person of his life or personal liberty without due process of law, because 'life being dependant, in the ultimate analysis upon health, which is inherent in the constitution and is duly recognised as a right to a healthy environment.'¹²

The scope of Article 21 is very wide and comprehensive, the right would have become meaningless if it would not have contained any such elements that enhances the quality of life as a right to clean, humane and healthy environment. However, this has only been possible because of various judicial pronouncements, the courts have readily relied on the right to equality to life by removing environmental hazards by means of Judicial Activism.

The higher judiciary in several cases have insured the Right to life to be inclusive of the Right to Wholesome environment. Some of the cases are:

➤ ***Subhash Kumar v. State of Bihar***¹³

In the following case the court observed that the Right to life guaranteed by Article 21 includes the right of enjoyment of pollution free water and air for full enjoyment of life.

Through this case for the first time the court recognised the Right to Wholesome

¹¹ Mahdi Balali Mood, Kobra Naseri, Zoha Tahergirabi, Mohammad Reza Khazdair and Mahmood Sadeghi, *Toxic Mechanisms of Five Heavy Metals: Mercury, Lead, Chromium, Cadmium and Arsenic*, *Frontiers Pharmacology* 1,1 (2021).

Chemicals such as chromium, cadmium, asbestos, arsenic, cyanide and mercury, usually found in waste from pharmaceuticals, fertilizer and pesticide industries also have harmful effects on human health.

¹² E.F Roberts, 'The right to a decent environment: A premature construct', *Environment Policy and Law*, vol 1, 1975-76, p. 185.

¹³ A.I.R 1991 SC 240 (India).

environment as a part of the fundamental right to life.

➤ ***M.C Mehta v. Kaml Nath***¹⁴

In this case it was clarified by the court that “any disturbance of the basic environment elements, namely air, water and soil, which are necessary for ‘life’ would be hazardous to ‘life’ within the meaning of Article 21 of the Constitution.”

➤ ***Hinch Lal Tiwari v. Kamla Devi***¹⁵

The Supreme Court in this case declared that material resources of a community like forests, tanks, ponds etc. are nature’s bounty. They maintain a delicate ecological balance and need to be protected for proper and healthy environment which enables people to enjoy a quality of life which is the essence of the guaranteed right under Article 21 of the Constitution.

➤ ***Rural Litigation Entitlement Kendra, Dehradun v. State of U.P*** (Dehradun Quarrying Case)¹⁶

The power of the Supreme Court under Article 32 of the Constitution is “injunctive” as well as remedial in nature to grant relief and it extends to wide range of situations to effectuate the fundamental rights under Article 21 and prevent environmental degradation. According to a committee, appointed by the court, mining of limestone in certain areas was found dangerous and damaging ecological balance.

This case for the first time brought into sharp focus the conflict between development and conservation and serves to emphasise the need for reconciling the two in large interest of the country.

Thus, the Indian Judiciary has expanded the scope of Article 21 drastically. The expression life assured in Article 21 of the constitution does not connote mere animal existence of continued drudgery through life, it has a much wider meaning which includes right to livelihood, better standards of life, hygienic conditions in workplace and leisure¹⁷. Such innovative approach would prevent the further deterioration of the environment in

¹⁴ A.I.R 2000 SC 1997 (India).

¹⁵ A.I.R 2001 SC 3215 (India).

¹⁶ A.I.R 1988 SC 2187 (India).

¹⁷ Consumer Education And Research Centre v. Union of India, A.I.R 1995 SC 922(India).

India and would even punish the people harming the environment¹⁸. Also the courts have laid down the principle of compensation for the damage caused to the environment and those affected by it.¹⁹The term Right to clean environment is not only restricted to human beings but also to other animate and inanimate objects of the environment. By this we can conclude that Right to Life is incomplete without Right to Wholesome Environment.

5. RECOMMENDATIONS

- Such products should be brought that comes in reusable packaging, for example such containers that can be reused and recycled as it would reduce land pollution.
- Non-usage of poly bags as they are of non-degradable in nature because they do not degrade in soil and even materials kept in poly bags are not healthy for humans to be consumed. The stray animals sometimes also intakes such poly materials.
- Saving paper by not misusing them as they are made by the pulp of the trees and even sending the used paper for recycling. This is the most essential step that needs to be taken as if it is followed it would save number of trees from felling down.
- Consuming less automobile fuels like petroleum and diesel so that air pollution can be reduced which in turn would reduce the number of air borne diseases. Air borne diseases kills number of people every year.
- Car-pooling should be encouraged in offices, colleges and even amongst neighbours as it would reduce automobile fuels which would then reduce the air pollution, preventing injuries to environment and the life forms.
- The trees and forests should not be felled for unreasonable reasons as it would lead to less of fresh air resulting in the increase of polluted air, which no doubt causes health issues to the humans and animals. Even land pollution increases when deforestation occurs.

¹⁸ Vellore Citizen's Welfare Forum v. Union of India, A.I.R 1996 SC 2715 (India).

The Supreme Court in this case held that the redemption of the damaged environment is part of the process of "sustainable development" and as such polluter is liable to pay the cost of the individual sufferers as well as the cost of reversing the damaged ecology.

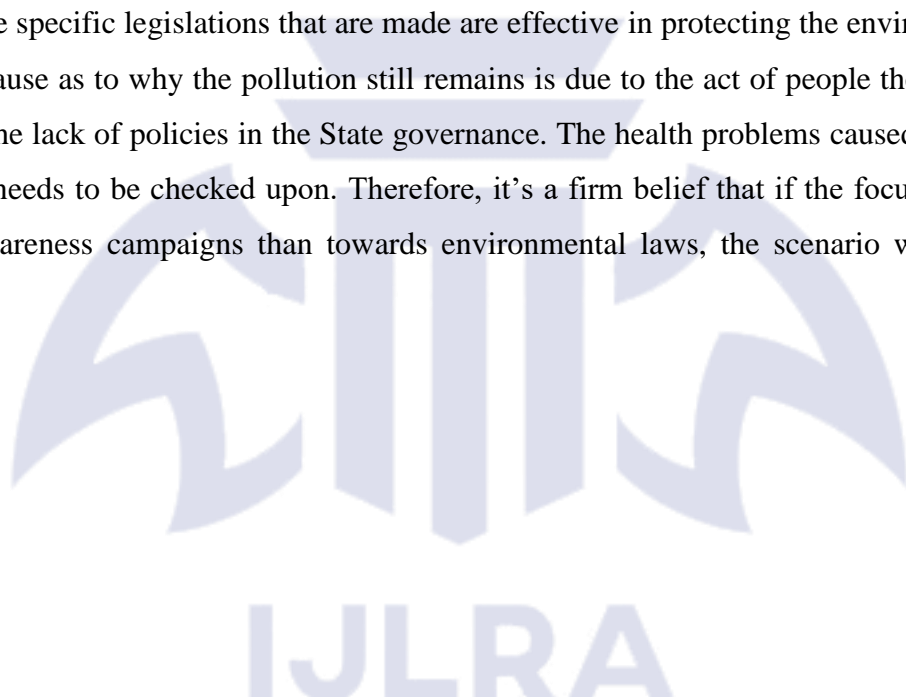
¹⁹ M.C Mehta v. Union of India (Shriram Gas Leak Case), A.I.R 1987 SC 1086(India).

The Supreme Court while determining an important question as to the amount of compensation payable to the victims affected by leakage of oleum gas from the factory held that it could entertain a petition under Article 32 of the Constitution and it could lay down the principles on which the quantum of compensation could be computed and paid. The court in this case evolved the principle of absolute liability to pay the compensation for the violation of fundamental rights. The court also stated that that the right to life also contains the right to claim compensation. This case is significant as it evolved a new jurisprudence of liability towards the victims of pollution caused by the industry engaged in hazardous and inherently dangerous activities.

- More factories for recycled goods need to be established and the use of recycled goods should be promoted as it would reduce the consumption of raw materials that are derived from nature and also the leftover of the reused products would be utilised efficiently.
- Such products should be taken into usage that are environmental friendly. “Ecolabelling” is a voluntary method of environmental performance certification and labelling of environment friendly products.²⁰

6. CONCLUSION

Thus, it can be aptly concluded after the thorough research that the Constitutional mandates are apt and sufficient in protecting the environment. Our fundamental law has sufficient provisions and even the specific legislations that are made are effective in protecting the environment. But, the major cause as to why the pollution still remains is due to the act of people themselves and not due to the lack of policies in the State governance. The health problems caused are grave in nature and needs to be checked upon. Therefore, it's a firm belief that if the focus shifts more upon to awareness campaigns than towards environmental laws, the scenario would change drastically.



²⁰ S.C. SHASTRI, ENVIRONMENTAL LAW, 575 (2015)